Are the Corporation and Its Employees the Same?: Piercing the Intracorporate Conspiracy Doctrine in a Post-Enron World*

I. INTRODUCTION

In recent years, the United States has seen numerous corporate scandals. Names like Enron, WorldCom, Arthur Anderson, and Adelphia leave a bad taste in the mouths of investors, creditors, and employees alike. In response to the large number of accounting and securities frauds, the government enacted policies to curb the questionable business practices occurring in corporate America. Legislation like the Sarbanes-Oxley Act has increased accountability for corporate agents and deterred illegal business activity.[1] At the same time, earlier legislation that had an intended purpose of targeting this type of white-collar crime, such as the Racketeer Influenced and Corrupt Organizations Act (RICO), is limited in its application in these scenarios.[2] One of the limitations of RICO is the intracorporate conspiracy doctrine. This doctrine bars a plaintiff from bringing a conspiracy claim against a corporation and its agents if the agent is acting within the scope of her employment or authority.[3] The agent and the corporation are considered to be the same entity, thus negating an essential element of a conspiracy claim, the multiplicity of actors.[4] Therefore, actions of the agent or employee are attributed to the corporation, and the corporation cannot conspire with itself.[5]

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1. *See* Jamie Dietrich Hankinson, *Golden Parachute Tax Provisions Fall Flat: Tax Gross-Ups Soften Their Impact to Executives and* Square D *Overinflates Their Coverage*, 34 STETSON L. REV. 767, 791 (2005) (describing the nature of the Act).

2. Michael Goldsmith, *Resurrecting RICO: Removing Immunity for White-Collar Crime*, 41 HARV. J. ON LEGIS. 281, 283 (2004).

3. McAndrew v. Lockheed Martin Corp., 206 F.3d 1031, 1036 (11th Cir. 2000).

4. *Id.*

5. *Id.*

The intracorporate conspiracy doctrine first arose in the antitrust context.[6] The application of the doctrine in this realm of law made sense because of the difficulty for a corporation to conspire with itself in order to create a monopoly or restrain trade.[7] The doctrine was later extended to federal discrimination cases where it was hard to determine how a corporation would conspire with its agents to discriminate against others.[8] At the same time, courts have noted at least two exceptions to the application of the intracorporate conspiracy doctrine. First, the doctrine does not apply when the conspiracy charge levied against the defendant is criminal.[9] Second, the "personal stake exception" bars the use of the doctrine when an agent has an independent stake in the conspiracy.[10] In recent years, a debate has existed in the appellate courts over whether to apply the intracorporate conspiracy doctrine to conspiracy claims arising under RICO, 18 U.S.C. § 1962(d).[11] The Fourth and Eight Circuits have allowed the application of the doctrine while the Seventh, Ninth, and Eleventh Circuits have barred its use.[12] The issue over whether the doctrine is applicable in this context remains unresolved.

While the reasonings of the Seventh, Ninth, and Eleventh Circuits are flawed, the use of the intracorporate conspiracy doctrine, nevertheless, should be barred in civil RICO conspiracy cases.[13] The recent wave of corporate fraud has resulted in a need for increased deterrents to illegal business practices. The scandals of companies like Enron and WorldCom have changed the perception of corporate America, and more stringent policies are needed to restore faith in corporations and the American economy in general. This Comment seeks to show that the dissolution of the intracorporate conspiracy doctrine in RICO situations would help to supplement corporate reform legislation, like the Sarbanes-Oxley Act, in order to deter future illegal business activity.

In this Comment, Part II examines the reasons underlying the intracorporate conspiracy doctrine and its historical applications in

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6. *Id.*

7. *Id.*

8. *See id.* at 1036–37 (noting that two executives could not conspire "to discriminate in furtherance of the purpose of the business").

9. *See id.* at 1038 (noting an exception when the conspiracy arises under the federal criminal code).

10. ePlus Tech., Inc. v. Aboud, 313 F.3d 166, 179 (4th Cir. 2002).

11. Kirwin v. Price Commc'ns Corp., 391 F.3d 1323, 1326 (11th Cir. 2004).

12. *Id.* at 1326–27.

13. *See infra* Part II.

different conspiracy situations. In addition, Part II discusses RICO provisions and addresses the appellate court split in the application of the doctrine in civil RICO conspiracy cases. Part III identifies the flawed reasonings employed by the Seventh, Ninth, and Eleventh Circuits for barring the application of the intracorporate conspiracy doctrine. Part III attempts to show that there should be a distinction between criminal and civil RICO conspiracies and that the purpose of RICO is not threatened by the application of the intracorporate conspiracy doctrine. Part IV asserts that the intracorporate conspiracy doctrine, nevertheless, should not apply in civil RICO conspiracy cases due to the need for increased deterrence of illegal business practices. Lastly, Part IV examines the effect of Sarbanes-Oxley on deterrence and provides possible implications for the dissolution of the intracorporate conspiracy doctrine.

II. BACKGROUND

A. History and Application of the Intracorporate Conspiracy Doctrine

1. Formation of the Intracorporate Conspiracy Doctrine

The essence of the doctrine is that agents of a corporation and their actions are attributed to the corporation itself, which negates the multiple actors requirement of a conspiracy claim.[14] Because a corporation is a single legal entity consisting of itself and its agents, it is impossible for the two to conspire with each other.[15] The first applications of the intracorporate conspiracy doctrine arose in the antitrust context.[16] The theory makes sense logically in this context because a single corporation could not attempt to restrain trade or monopolize a particular market acting only with its agents.[17] Section 1 of the Sherman Antitrust Act makes it illegal for any "person" to conspire to restrain trade.[18] Similarly, § 2 makes it illegal for "persons" to conspire in an attempt to monopolize trade or commerce.[19] Regardless of the fact that the language of the Sherman Act proscribes any "person" from conspiring, the Fifth Circuit held that "[a] corporation cannot conspire with itself any more than a private individual can, and it is the general rule that the acts

14. McAndrew v. Lockheed Martin Corp., 206 F.3d 1031, 1036 (11th Cir. 2000).
15. *Id.*
16. *Id.*
17. *Id.*
18. 15 U.S.C. § 1 (2000).
19. 15 U.S.C. § 2 (2000).

of the agent are the acts of the corporation."[20] The Fifth Circuit reasoned that the agents were merely "[doing] their day to day jobs in formulating and carrying out [the corporation's] managerial policy."[21] At the same time, the Fifth Circuit determined, in dicta, that a corporation and its subsidiaries could be guilty of conspiring with each other to restrain trade in violation of the Sherman Act but provided no reasoning for why they should be considered separate entities.[22] The adoption of the intracorporate conspiracy doctrine has extended as far as to reach the Supreme Court of the United States.[23]

2. Application of the Doctrine in Federal Discrimination Conspiracy Claims

While the intracorporate conspiracy doctrine was first established to preserve the purpose of the Sherman Antitrust Act, the doctrine was extended to federal discrimination claims arising under 42 U.S.C. § 1985.[24] Essentially, § 1985 lists several situations where it is illegal to conspire to interfere with civil rights. Under § 1985(1), it is unlawful to conspire to prevent an officer from performing his or her duties.[25] Section 1985(2) makes it illegal to conspire to obstruct justice or intimidate a party, witness, or juror.[26] Lastly, § 1985(3) makes it unlawful for "two or more persons" to conspire to deprive someone of their rights or privileges entitled under the law.[27] In *Dombrowski v. Dowling*,[28] the Seventh Circuit held that the requirements of § 1985 were not satisfied when "two or more executives of the same firm" acted in furtherance of the discriminatory purposes of the business.[29] In the case, the employees of a prospective landlord corporation would not rent space to a white lawyer who represented minority clients, and the lawyer brought a claim alleging the employees and the corporation had discriminated against him.[30] The court inferred that there could be

20. Nelson Radio & Supply Co. v. Motorola, Inc., 200 F.2d 911, 914 (5th Cir. 1952).

21. *Id.*

22. *Id.*

23. *See* Copperweld Corp. v. Independence Tube Corp., 467 U.S. 752, 777 (1984) (stating that a corporation and its subsidiary "are incapable of conspiring with each other for purposes of § 1 of the Sherman Act").

24. McAndrew v. Lockheed Martin Corp., 206 F.3d 1031, 1035–36 (11th Cir. 2000).

25. 42 U.S.C. § 1985(1) (2000).

26. *Id.* § 1985(2).

27. *Id.* § 1985(3).

28. 459 F.2d 190 (7th Cir. 1972).

29. *Id.* at 196.

30. *Id.* at 191.

situations where an agent's actions could fit the requirements of a conspiracy, but the situation where the alleged discrimination is a single act by the corporation perpetrated by two or more agents "will normally not constitute the conspiracy contemplated by [§ 1985(3)]."[31] The facts of *Dombrowski* failed to establish that the actions conducted by the agents were not a "single act of discrimination by a single business entity" and the plaintiff's § 1985(3) conspiracy allegation was not established.[32] This application of the intracorporate conspiracy doctrine has been extended to the Second,[33] Fourth,[34] Fifth,[35] Sixth,[36] and Eighth Circuits[37] as well.

3. Criminal Conspiracy Exception to the Intracorporate Conspiracy Doctrine

While the intracorporate conspiracy doctrine has been recognized in antitrust and federal discrimination civil cases, there is an established exception to the doctrine in federal criminal conspiracy cases. Eighteen U.S.C. § 371 makes it a crime for "two or more persons [to] conspire . . . to commit any offence against the United States."[38] In *Dussouy v. Gulf Coast Investment Corp.*,[39] the Fifth Circuit acknowledged that "a corporation can be convicted of criminal charges of conspiracy based solely on conspiracy with its own employees."[40] While the conspiracy in *Dussouy* arose under a state statute,[41] the Eleventh Circuit extended the application of the exception to the intracorporate conspiracy doctrine to conspiracy claims arising under § 371.[42] The Eleventh Circuit's rationale

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31. *Id.* at 196.

32. *Id.*

33. *See* Girard v. 94th St. & Fifth Ave. Corp., 530 F.2d 66, 71–72 (2d Cir. 1976) (stating that the plaintiff did not "assert that the individual defendants were acting other than as officers and directors" and, therefore, dismissing the § 1875(3) claim).

34. *See* Buschi v. Kirven, 775 F.2d 1240, 1253 (4th Cir. 1985) (stating that the intracorporate conspiracy doctrine was applicable to bar plaintiff's § 1985(3) claim).

35. *See* Benningfield v. City of Houston, 157 F.3d 369, 378–79 (5th Cir. 1998) (stating that the intracorporate conspiracy doctrine applied in the § 1985(3) claims).

36. *See* Hull v. Cuyahoga Valley Joint Vocational Sch. Dist. Bd. of Educ., 926 F.2d 505, 509–10 (6th Cir. 1991) (stating that plaintiff's § 1985(3) claim was barred by the intracorporate conspiracy doctrine).

37. *See* Cross v. Gen. Motors Corp., 721 F.2d 1152, 1156–57 (8th Cir. 1983) (stating the plaintiff's § 1985(3) claim was barred by the intracorporate conspiracy doctrine).

38. 18 U.S.C. § 371 (2000).

39. 660 F.2d 594 (5th Cir. 1981).

40. *Id.* at 603 (citing United States v. Consol. Coal Co., 424 F. Supp. 577 (S.D. Ohio 1976)).

41. *Id.* at 597.

42. United States v. Hartley, 678 F.2d 961, 972 (11th Cir. 1982), *overruled on other grounds by*

in *United States v. Hartley* was that the personification of corporations was meant to extend liability to corporations, not to limit criminal liability for agents of corporations.[43] The use of the doctrine in this context is flawed since "the action by an incorporated collection of individuals creates the 'group danger' at which conspiracy liability is aimed, and the view of the corporation as a single legal actor becomes a fiction without a purpose."[44] This exception has been applied to § 371 conspiracy claims in the First,[45] Sixth,[46] Eighth,[47] and Ninth Circuits.[48]

B. Application of the Intracorporate Conspiracy Doctrine in RICO Conspiracies

1. History and Application of RICO Provisions

Initially, RICO was enacted to "eliminate the influence of organized crime on American business."[49] The Act contains criminal penalties for violations of § 1962 including fines and imprisonment.[50] The Act also allows for civil plaintiffs to bring claims against RICO defendants and "recover triple their provable damages."[51] By allowing civil plaintiffs to bring claims, the RICO Act helps "'to supplement Government efforts to deter [racketeering activity].'"[52] In general, courts have broadly interpreted the language of the statute.[53] This broad interpretation of RICO was originally necessary to encompass all the different criminal activities the mafia could commit.[54] There is evidence that Congress intended for RICO to apply only in organized crime cases, but today

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United States v. Goldin Indus., Inc., 219 F.3d 1268 (11th Cir. 2000).

43. *Id.* at 970.

44. *Dussouy*, 660 F.2d at 603.

45. *See* United States v. Peters, 732 F.2d 1004, 1008 (1st Cir. 1984) (stating that actors could be convicted of conspiratorial actions conducted within the scope of authority).

46. *See* United States v. Ames Sintering Co., 927 F.2d 232, 237 (6th Cir. 1990) (stating that a corporation may be convicted in a criminal context for conspiring with its agents).

47. *See* United States v. Hugh Chalmers Chevrolet-Toyota, Inc., 800 F.2d 737, 738 (8th Cir. 1986) (stating that a corporation may be responsible for the conspiracy of its agents).

48. *See* United States v. Hughes Aircraft Co., 20 F.3d 974, 978–79 (9th Cir. 1994) (stating that the intracorporate conspiracy doctrine does not apply in § 371 cases).

49. Alexander M. Parker, *Stretching RICO to the Limit and Beyond*, 45 DUKE L.J. 819, 819 (1996).

50. 18 U.S.C. § 1963(a) (2000).

51. Parker, *supra* note 49, at 820.

52. Adam Bain & Ugo Colella, *Interpreting Federal Statutes of Limitations*, 37 CREIGHTON L. REV. 493, 566 (2004) (quoting Rotella v. Wood 528 U.S. 549, 557 (2000)).

53. Parker, *supra* note 49, at 820.

54. *See id.* (stating that "the breadth of RICO is directly related to the breadth of its predicate offenses").

RICO has been stretched to its "maximum breadth" and applies in numerous situations outside of the mafia.[55]

2. Overview of RICO Provisions

Eighteen U.S.C. § 1962 lists the various prohibited activities under RICO. A RICO claim under any of the subsections requires "'1) a person who engages in 2) a pattern of racketeering activity, 3) connected to acquisition, establishment, conduct, or control of an enterprise.'"[56] In order for conduct to constitute a "pattern of racketeering activity," the person must have committed at least two predicate acts of racketeering activity.[57] "Racketeering activity," as defined in section 1961(1), encompasses a wide variety of criminal activity ranging from simple bribery to crimes relating to chemical weapons.[58] Subsection (a) makes it illegal

> for any person who has received any income derived, directly or indirectly, from a pattern of racketeering activity or through collection of an unlawful debt . . . to use or invest, directly or indirectly, any part of such income, or proceeds of such income, in acquisition of any interest in, or the establishment or operation of, any enterprise which is engaged in, or the activities of which affect, interstate or foreign commerce.[59]

Essentially, subsection (a) "prohibits the investment or improper use of money obtained from racketeering activity."[60] Under subsection (b) it is "unlawful for any person through a pattern of racketeering activity or through collection of an unlawful debt to acquire or maintain, directly or indirectly, any interest in or control of any enterprise which is engaged in, or the activities of which affect, interstate or foreign commerce."[61] For subsections (a) and (b), there has to be a connection "between the claimed RICO violations and the injury suffered by the plaintiff."[62]

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55. *Id.* at 833–34.

56. Crowe v. Henry, 43 F.3d 198, 204 (5th Cir. 1995) (quoting 855 F.2d 241, 242) (emphasis omitted).

57. 18 U.S.C. § 1961(5) (2000).

58. *Id.* § 1961(1) (Supp. 2006).

59. 18 U.S.C. § 1962(a) (2000).

60. Simon v. Value Behavioral Health, Inc., 208 F.3d 1073, 1083 (9th Cir. 2000).

61. 18 U.S.C. § 1962(b).

62. Crowe v. Henry, 43 F.3d 198, 205 (5th Cir. 1995).

In *Crowe v. Henry*, as an example, the plaintiff correctly pleaded both § 1962(a) and (b) violations of RICO.[63] In the case, the plaintiff suffered damages from a § 1962(a) violation when "[f]unds that he owned, that were allegedly fraudulently taken . . ., were invested into the enterprise and used to reduce the indebtedness on land that [the plaintiff] allege[d] was taken from him through a pattern of racketeering activity."[64] Also, the plaintiff correctly asserted a § 1962(b) claim when he "alleged that [the defendant] gained ownership of his land and the farming venture through a pattern of racketeering activity."[65] In each claim, the plaintiff asserted that there was a "person," the RICO defendants, who engaged in a pattern of racketeering through an "enterprise," plaintiff's farm and land, which resulted in damages to him.[66]

While subsections (a) and (b) are fairly specific, the remaining two subsections of § 1962 are easier to meet, so causes of action under these two subsections are more common. Subsection (c) makes it illegal "for any person employed by or associated with any enterprise engaged in, or the activities of which affect, interstate or foreign commerce, to conduct or participate, directly or indirectly, in the conduct of such enterprise's affairs through a pattern of racketeering activity or collection of unlawful debt."[67] Subsection (c) claims are easier to bring than subsection (b) claims because a RICO defendant only has to be "associated" with an enterprise rather than "acquire" or "maintain" an enterprise.[68] The control element of subsection (b) "requires more than a general interest in the results of [the enterprise's] actions, or the ability to influence the enterprise through deceit."[69]

The last provision, section 1962(d), states, "[i]t shall be unlawful for any person to conspire to violate any of the provisions of subsection (a), (b), or (c) of this section."[70] A RICO plaintiff is not required to prove that a RICO violation of one of these three subsections occurred.[71]

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63. *Id.*

64. *Id.*

65. *Id.*

66. *See id.* (stating that the plaintiff properly alleged violations of § 1962(a) and (b)).

67. 18 U.S.C. § 1962(c) (2000).

68. *See* Tal v. Hogan, 453 F.3d 1244, 1268 (10th Cir. 2006) (stating that it is more difficult to bring a § 1962(b) claim due to the "control" requirement).

69. *Id.*

70. 18 U.S.C. § 1962(d).

71. *See* Efron v. Embassy Suites (P.R.), Inc., 223 F.3d 12, 21 (1st Cir. 2000) ("A conspiracy claim under section 1962(d) may survive a factfinder's conclusion that there is insufficient evidence to prove a RICO violation . . . ." (citing Howard v. Am. Online, Inc., 208 F.3d 741, 751 (9th Cir. 2000)) (emphasis omitted)).

Rather, a claim fails only "if the pleadings do not state a substantive RICO claim upon which relief may be granted."[72] Therefore, a RICO plaintiff may bring a conspiracy claim under § 1962(d) without having to worry about the loss of a supplemental claim brought under one of the other subsections of § 1962 affecting the conspiracy claim. While at first glance it appears that the intracorporate conspiracy doctrine will apply in § 1962(d) claims similarly to antitrust and federal discrimination cases, in reality, the situation is more complex.

3. Application of Intracorporate Conspiracy Doctrine in Appellate Courts

The most recent application of the intracorporate conspiracy doctrine has occurred in the realm of civil RICO conspiracies. When it comes to § 1962(d) conspiracy claims, the appellate courts are split on the issue of whether the use of the intracorporate conspiracy doctrine should be allowed. Both the Fourth and Eighth Circuits have applied the doctrine, at least in dicta, barring RICO conspiracy claims arising under § 1962(d).[73] On the other hand, the Seventh, Ninth, and Eleventh Circuits have failed to extend the doctrine to RICO conspiracies.[74] Each of these circuits have had different fact patterns and applied different reasonings for either prohibiting or allowing the use of the intracorporate conspiracy doctrine.

a. Eighth Circuit's Reasoning

The Eighth Circuit addressed the issue of the intracorporate conspiracy doctrine in *Fogie v. THORN Americas, Inc.*[75] In *Fogie*, the only alleged participants in the conspiracy were the parent company and

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72. *Id.*

73. *See* ePlus Tech., Inc. v. Aboud, 313 F.3d 166, 179 (4th Cir. 2002) (stating that generally the intracorporate conspiracy doctrine bars conspiracy claims between agents and corporations (citing Bowman v. State Bank of Keysville, 331 S.E.2d 797, 801 (Va. 1985))); Fogie v. THORN Ams., Inc., 190 F.3d 889, 899 (8th Cir. 1999) (stating that the parent corporation and its subsidiaries could not conspire with each other).

74. *See* Kirwin v. Price Commc'ns Corp., 391 F.3d 1323, 1327 (11th Cir. 2004) (stating that the intracorporate conspiracy doctrine does not apply in § 1962(d) claims); Webster v. Omnitrition Int'l, Inc., 79 F.3d 776, 787 (9th Cir. 1996) (agreeing with the reasoning of the Seventh Circuit in barring the use of the intracorporate conspiracy doctrine); Ashland Oil, Inc. v. Arnett, 875 F.2d 1271, 1281 (7th Cir. 1989) (stating that the intracorporate conspiracy doctrine threatens the purpose of RICO).

75. 190 F.3d 889.

its wholly owned subsidiaries.[76] The court held that "as a matter of law a parent corporation and its wholly owned subsidiaries are legally incapable of forming a conspiracy with one another."[77] The court looked to *Copperweld Corp. v. Independence Tube Corp.* for guidance on the issue.[78] In *Copperweld*, the Supreme Court reasoned that a parent corporation and its subsidiaries shared the same consciousness and "a complete unity of interest."[79] A parent and a subsidiary rely on the same set of economic resources and have the same purpose.[80] There are not "two separate corporate consciousnesses," and there could not be any meeting of the minds since the two already share this "complete unity of interest."[81] In addition, if the intracorporate conspiracy doctrine did not apply, then the result would not be a deterrence to conspire, but rather a deterrence from forming wholly owned subsidiaries.[82] In *Fogie*, the Eighth Circuit noted that there was a "lack of distinctiveness" between the corporation and its subsidiaries.[83] Looking at the facts of the case and applying the reasoning of *Copperweld*, the court held that the parent company and its subsidiaries formed a single consciousness, thus, the two could not conspire with each other.[84]

b. Fourth Circuit's Reasoning

While acknowledging that the intracorporate conspiracy doctrine exists, the Fourth Circuit did not apply the doctrine in *ePlus Technology, Inc. v. Aboud* due to the personal-stake exception.[85] While the court generally agreed that acts of agents are treated as acts of the corporation itself,[86] it held there is an exception to the doctrine where the agent has an independent stake in the conspiracy.[87] In *ePlus Technology*, the

76. *Id.* at 898.

77. *Id.*

78. *Id.* (citing Copperweld Corp. v. Independence Tube Corp., 467 U.S. 752 (1984)).

79. 467 U.S. at 771.

80. *Id.*

81. *Id.*

82. *See id.* at 772–73 (stating that corporations would rather form unincorporated divisions to avoid the rule).

83. 190 F.3d at 899.

84. *Id.*

85. *See* ePlus Tech., Inc. v. Aboud, 313 F.3d 166, 179 (4th Cir. 2002) (stating that the intracorporate conspiracy doctrine usually applies unless the agent has a "personal stake" in the conspiracy).

86. *Id.*

87. *Id.*

defendant agent, Aboud, siphoned money out of the corporation.[88] The personal-stake exception applied since Aboud had a stake that was completely distinct from her connection to the corporation.[89] Aboud's siphoning of assets promoted her own interests and was in fact contrary to the interests of the corporation.[90] The Fourth Circuit limited the application of the personal-stake exception to situations where the agent's stake in the conspiracy is "independent of his relationship to the corporation."[91]

While this exception has been applied in the Fourth Circuit, other appellate courts have not extended the principle in civil RICO conspiracy cases in their jurisdictions. This personal-stake exception has been recognized in the Tenth Circuit with a conspiracy arising under 42 U.S.C. § 1985(2).[92] The exception applied where the coworkers' "personal stake" in achieving the corporation's illegal objective was distinct from the corporation's stake.[93] At the same time, the Sixth Circuit denied the application of the personal-stake exception in a Sherman Antitrust conspiracy claim.[94] The Sixth Circuit reasoned that it was "not convinced that an agent acting with anticompetitive motives due to some independent personal stake raise[d] sufficient antitrust concerns to warrant abandoning the traditional rule that a principal cannot conspire with one of its agents."[95] The application of the exception in one context and not the other can likely be attributed to the court's ability to determine whether an individual has a "personal stake" in the conspiracy. In *Brever*, it is easy to see how the coworkers had an interest to make sure that the plaintiff did not testify as to the illegal operation of an incinerator since their jobs would be on the line.[96] It is harder to imagine how medical staffs would have an independent stake in a conspiracy with a hospital to create a monopoly that is different from the corporation's objective.[97] While these appellate courts have debated the application of the exception in other conspiracy contexts, the only

88. *Id.* at 179–80.

89. *Id.* at 179.

90. *See id.* at 179–80 ("Aboud had no interest in seeing MBT profit: the point of the MBT bust-out scheme was to send the corporation into bankruptcy.").

91. *Id.* at 179.

92. Brever v. Rockwell Int'l Corp., 40 F.3d 1119, 1126–27 (10th Cir. 1994).

93. *Id.*

94. Nurse Midwifery Assocs. v. Hibbett, 918 F.2d 605, 615 (6th Cir. 1990).

95. *Id.*

96. *See Brever*, 40 F.3d at 1127 (stating that coworkers had an independent interest to deter her testimony).

97. *See Nurse Midwifery*, 918 F.2d at 615 (stating the personal-stake exception did not apply merely because the agents acted with some independent stake).

appellate court to address the issue in *RICO conspiracy cases* has been the Fourth Circuit.[98]

c. Seventh and Ninth Circuits' Reasoning

Both the Seventh and Ninth Circuits failed to extend the intracorporate conspiracy doctrine to civil RICO conspiracy claims. In *Ashland Oil, Inc. v. Arnett*, the Seventh Circuit distinguished the holding in *Copperweld* from a conspiracy arising under § 1962(c).[99] The RICO defendants in the case asserted that the intracorporate conspiracy doctrine did not apply between a corporation and its accountant.[100] The Seventh Circuit recognized that the conspiracy in *Copperweld* between a corporation and its subsidiaries did not affect the overall goal of the Sherman Act—to protect competition.[101] On the other hand, the court held that barring claims due to the intracorporate conspiracy doctrine in RICO civil conspiracies *did* threaten the purposes of RICO: to "prevent[] the infiltration of legitimate businesses by racketeers and separat[e] racketeers from their profits."[102] The Ninth Circuit used the same reasoning in *Webster v. Omnitrition International, Inc.*[103] The court agreed that the Seventh Circuit's interpretation of the intracorporate conspiracy doctrine was correct and the defense was not allowed to bar § 1962(d) claims.[104] These appellate courts focused solely on the underlying purpose of RICO in barring the intracorporate conspiracy doctrine.

d. Eleventh Circuit's Reasoning

The Eleventh Circuit has held the intracorporate conspiracy doctrine inapplicable in civil conspiracy claims for different reasons than the other appellate courts. In *Kirwin v. Price Communications Corp.*,[105] former minority shareholders asserted a civil RICO conspiracy claim against the corporation, its subsidiaries, and its CEO.[106] The Eleventh

98. *See* ePlus Tech., Inc. v. Aboud, 313 F.3d 166, 179–80 (4th Cir. 2002) (stating that the personal-stake exception barred the use of the intracorporate conspiracy doctrine).

99. Ashland Oil, Inc. v. Arnett, 875 F.2d 1271, 1281 (7th Cir. 1989).

100. *Id.*

101. *Id.*

102. *Id.*

103. 79 F.3d 776, 787 (9th Cir. 1996).

104. *Id.*

105. 391 F.3d 1323 (11th Cir. 2004).

106. *Id.* at 1324.

Circuit recognized that a split existed within the appellate courts pertaining to the application of the intracorporate conspiracy doctrine for § 1962(d) claims.[107] Instead of following the reasoning of any of the other appellate courts, the court looked to a similar case within the Eleventh Circuit, *McAndrew v. Lockheed Martin Corp.*,[108] in deciding that the use of the intracorporate conspiracy doctrine should be barred in § 1962(d) claims.[109]

In *McAndrew*, employees of Lockheed were alleged to have committed a criminal conspiracy, arising under 18 U.S.C. § 371 and 18 U.S.C. § 1512, and a civil conspiracy, arising under 42 U.S.C. § 1985(2).[110] The Eleventh Circuit held that because a criminal conspiracy was alleged in addition to a civil conspiracy, the intracorporate conspiracy doctrine was inapplicable.[111] The court reasoned that the doctrine "was never intended nor used to shield conspiratorial conduct that was criminal in nature."[112] Since the underlying conduct was criminal, the court determined that the doctrine should not be allowed to bar a civil conspiracy claim.[113] In addition, the court reasoned that barring the use of the intracorporate conspiracy doctrine furthered the purpose of § 1985(2), which was to ensure that people were prosecuted for illegal activity "regardless of their status of incorporation."[114] In *Kirwin*, the Eleventh Circuit applied this same reasoning in determining that the doctrine should not be allowed to bar § 1962(d) claims.[115] Since § 1962 claims can be brought either in civil or criminal court, the underlying conduct of a civil RICO conspiracy will almost always be considered criminal in nature and would disallow the use of the doctrine.[116] At the same time, the Eleventh Circuit also looked to *Cedric*

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107. *Id.* at 1326.

108. 206 F.3d 1031 (11th Cir. 2000).

109. *See Kirwin*, 391 F.3d at 1326–27 (discussing *McAndrew* and holding that "the intracorporate conspiracy doctrine does not bar § 1962(d) claims").

110. *McAndrew*, 206 F.3d at 1034.

111. *See id.* at 1040–41 (stating that there should be "a consistent application of the criminal conspiracy exception to the intracorporate conspiracy doctrine regardless of whether the criminal conspiracy arises under the federal criminal or civil code").

112. *Id.*

113. *See id.* at 1041 (holding that alleging an intracorporate conspiracy also alleged a criminal conspiracy, therefore the intracorporate conspiracy doctrine cannot apply "regardless of whether the criminal conspiracy arises under 18 U.S.C. § 371 or under 42 U.S.C. § 1985").

114. *Id.*

115. *See* Kirwin v. Price Commc'ns Corp., 391 F.3d 1323, 1327 (11th Cir. 2004) (stating that the *McAndrew* principle is also applicable to a civil conspiracy claim based on § 1962(d)).

116. *See* United States v. Palumbo Bros., 145 F.3d 850, 867 (7th Cir. 1998) (noting that RICO has both civil and criminal penalties).

Kushner Promotions, Ltd. v. King[117] to further explain its distinction between a corporation and its agents.[118]

In *Cedric Kushner*, the Supreme Court confronted the issue of whether the sole shareholder of a corporation was distinct from the corporation.[119] Section 1962(c) requires that there be a "person" and an "enterprise," through which the "person" improperly acts, that are distinct from each other.[120] The Supreme Court stated that "[t]he corporate owner/employee, a natural person, is distinct from the corporation itself, a legally different entity with different rights and responsibilities due to its different legal status."[121] The Court also determined that this was not inconsistent with the intracorporate conspiracy doctrine since the "doctrine turns on specific antitrust objectives."[122] While the Supreme Court distinguished a corporation and a sole shareholder to satisfy the wording of § 1962(c),[123] the Eleventh Circuit extended this idea of distinct entities in deciding "agents may be held liable for their own conspiratorial actions" under § 1962(d).[124] With a three-to-two split in the appellate courts, the issue now is whether the intracorporate conspiracy doctrine should not apply in civil RICO conspiracy claims, or whether the doctrine should apply and bar civil RICO plaintiffs from bringing § 1962(d) claims where the alleged conspiracy involves a corporation and its agents.

III. ANALYSIS

A. Rationale for Barring the Use of the Intracorporate Conspiracy Doctrine is Flawed

The rationale of appellate courts that bar the application of the intracorporate conspiracy doctrine in civil RICO conspiracy cases is flawed. The Eleventh Circuit's grouping of civil and criminal conspiracies together is inappropriate, and a distinction should be made

117. 533 U.S. 158 (2001).

118. *See Kirwin*, 391 F.3d at 1327 (citing *Cedric Kushner* for the proposition that "[c]orporations and their agents are distinct entities, and thus, agents may be held liable for their own conspiratorial actions").

119. *Cedric Kushner*, 533 U.S. at 160.

120. *See id.* at 161 (stating that to establish liability under § 1962(c) there must be distinct entities of a person and an enterprise).

121. *Id.* at 163.

122. *Id.* at 166.

123. *Id.*

124. Kirwin v. Price Commc'ns Corp., 391 F.3d 1323, 1327 (11th Cir. 2004).

between the two different types of conspiracies. Also, the Seventh and Ninth Circuits' belief that the purpose of RICO is threatened by the application of the intracorporate conspiracy doctrine is an overexaggeration. The intent of RICO is adequately protected by the personal-stake exception, agency law, and the other subsections of § 1962. If these principles are applied correctly, then there is little need to disallow the application of the intracorporate conspiracy doctrine. The reasoning of these courts is unconvincing and does not support the decision to bar the use of the intracorporate conspiracy doctrine.

1. Distinction Should Be Made Between Criminal and Civil Conspiracies

The Eleventh Circuit, in *Kirwin*, applied the reasoning of *McAndrew* in barring the use of the intracorporate conspiracy doctrine in civil RICO conspiracy claims.[125] The court in *McAndrew* held simply that "the criminal conspiracy exception to the intracorporate conspiracy doctrine applies regardless of whether the criminal conspiracy arises under [federal criminal law] or under [federal civil law]."[126] Since the conspiracy involved criminal activity that could have resulted in a criminal conspiracy charge, the intracorporate conspiracy doctrine did not apply.[127] Accordingly, in *Kirwin*, since the alleged racketeering activity could have resulted in a criminal RICO conspiracy claim, along with a civil claim, the doctrine also did not apply.[128] This reasoning for barring the use of the intracorporate conspiracy doctrine is flawed.

There should be a distinction between the use of the doctrine in civil cases and its use in criminal cases. The underlying purpose of criminal conspiracy claims, to punish criminals and deter future illegal activity, outweighs the need to compensate injured plaintiffs. It is this public necessity to not allow criminals to operate freely which makes the criminal conspiracy exception to the intracorporate conspiracy doctrine tolerable. Instead of noticing this heightened need for criminal conspiracy claims, the Eleventh Circuit focused solely on the fact that the

125. *Id.* at 1326–27.

126. McAndrew v. Lockheed Martin Corp., 206 F.3d 1031, 1041 (11th Cir. 2000).

127. *Id.*

128. *See Kirwin*, 391 F.3d at 1327 (stating that "the intracorporate conspiracy doctrine cannot be invoked to defeat a § 1962(d) claim"); United States v. Palumbo Bros., 145 F.3d 850, 867 (7th Cir. 1998) (noting that RICO has both civil and criminal penalties).

underlying conduct is the same in determining that there should be no distinction between the two types of conspiracies.[129]

Rather than the underlying conduct of actions, courts should look at the identity of the plaintiff and the purpose of the cause of action. In a criminal RICO conspiracy case, the plaintiff is the government. The government's remedies for the racketeering activity are to impose prison sentences and levy fines against the racketeers.[130] The purpose is to punish the racketeer and deter future violations, not to provide damages for injuries sustained.[131] If the government cannot distinguish the actor from the corporation, then the racketeers can effectively shield themselves from criminal prosecution, and the purpose is defeated. If conspirators are not punished, then other actors may decide to conduct similar illegal activities because there are no consequences, causing the public as a whole to suffer.

On the other hand, the plaintiffs in civil RICO conspiracy cases are injured parties. The remedies for these injured parties include treble damages.[132] The main purpose of this remedy is to provide the plaintiff with compensation for the injuries sustained from the racketeering activity.[133] While it also has the incidental effect of deterring RICO violations, since the damages are punitive,[134] the main attraction of civil RICO plaintiffs is that the injured parties can recover from profiting racketeers.[135] It is true that the intracorporate conspiracy doctrine will bar a plaintiff from recovering under § 1962(d) in some cases, but there are exceptions and other provisions of § 1962 that will still provide RICO plaintiffs adequate compensation for their injuries.[136] Corporations and their agents cannot shield themselves from civil liability as they could from criminal liability. For this reason, there is a greater necessity to disallow the use of the intracorporate conspiracy doctrine in criminal cases. The need does not exist in civil RICO

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129. *McAndrew*, 206 F.3d at 1041.

130. 18 U.S.C. § 1963(a) (2000).

131. *See* Michele R. Moretti, Note, *Using Civil RICO to Battle Anti-Abortion Violence: Is the Last Weapon in the Arsenal a Sword of Damocles?*, 25 NEW ENG. L. REV. 1363, 1373 (1991) ("[A]lthough RICO's legislative history reflects *concern* over the infiltration of legitimate businesses by traditional elements of organized crime, the statute's purpose is *general reform* designed to deter patterns of racketeering activity committed by, through, or against an enterprise." (citation omitted)).

132. 18 U.S.C. § 1964(c) (2000).

133. Shearson/Am. Express, Inc. v. McMahon, 482 U.S. 220, 240 (1987).

134. *See* Michele Ruscio, Note and Comment, *The Enforceability of Arbitration Agreements that Foreclose Statutory Awarded Remedies*, 22 J.L. & COM. 125, 130 (2003) ("The purpose of punitive damages in the RICO and PMPA statutes is to deter violations.").

135. *McMahon*, 482 U.S. at 240.

136. *See infra* Part III.A.2.

conspiracy cases, and therefore the doctrine should not be barred in these instances. While the Eleventh Circuit erred in failing to distinguish between civil and criminal conspiracies, the Seventh and Ninth Circuits' belief that the purpose of RICO is threatened by the intracorporate conspiracy doctrine is also flawed.

2. Purpose of RICO Act is Not Defeated by the Intracorporate Conspiracy Doctrine

The main purposes of the RICO Act are to "prevent[] the infiltration of legitimate businesses by racketeers and separat[e] racketeers from their profits."[137] The courts in *Ashland Oil* and *Webster* asserted that the intracorporate conspiracy doctrine should not be used in civil RICO conspiracy claims since it would defeat this purpose of the Act.[138] This assertion is flawed for three main reasons: the personal-stake exception to the intracorporate conspiracy doctrine covers many of the situations in which a RICO conspiracy occurs; agency law covers other situations; and the other subsections of § 1962 provide adequate protection of the intent of RICO when these two areas of law do not apply. Almost all corporate conspiracy claims can be broken down into four scenarios: (1) an agent or agents conduct racketeering activity outside the scope of employment to their benefit; (2) an agent or agents conduct racketeering activity outside the scope of employment but do not profit from the activity; (3) an agent or agents conduct racketeering activity within the scope of employment to their benefit; or (4) an agent or agents conduct racketeering activity within the scope of employment but do not profit. The personal-stake exception to the intracorporate conspiracy doctrine preserves possible conspiracy claims in the first scenario and possibly the third scenario.[139] The use of the intracorporate conspiracy doctrine in the first two scenarios is restricted according to the principles of agency law.[140] While the intracorporate conspiracy doctrine would normally bar the bringing of a conspiracy claim in scenarios three and four, where an agent acts within the scope of his employment, the *Cedric Kushner* case has made it possible for the other subsections of § 1962 to cover these two scenarios, at least for the most part.[141] Because these other

137. Ashland Oil, Inc. v. Arnett, 875 F.2d 1271, 1281 (7th Cir. 1989).
138. *See supra* Part II.B.3.c.
139. *See infra* Part III.A.2.a.
140. *See infra* Part III.A.2.b.
141. *See infra* Part III.A.2.c.

principles of law adequately preserve the purpose of the RICO Act, the Seventh and Ninth Circuits' reasoning is without merit.

a. Personal-Stake Exception Protects Against Profiting Conspirators

The personal-stake exception to the intracorporate conspiracy doctrine protects the intent of the RICO Act in many cases since it allows for "profiting conspirators" to have conspiracy claims levied against them.[142] Currently, the exception has only been applied in the Tenth and Fourth Circuits.[143] There is no reason to bar the use of the personal-stake exception since it furthers the purpose of RICO.[144] The exception should be extended to all jurisdictions so that "profiting conspirators" cannot use the intracorporate conspiracy doctrine to bar valid conspiracy claims. In applying the personal-stake exception, the principle is most applicable in the scenario where an agent or agents, working outside the scope of employment, profit from racketeering activity conducted through the corporation. Part of the difficulty in applying the personal-stake exception can be in determining whether an agent's stake is truly "independent."[145] It is easier to determine that an agent's stake is independent when the agent's actions are outside the scope of his or her employment and do not benefit the corporation. The most obvious scenario for the personal-stake exception occurs when the corporation itself is a victim.[146] In *ePlus Technology, Inc.*, the defendant created a "bust-out scheme" to siphon money from the company.[147] This attempt to steal money from the corporation clearly constituted an independent personal stake.[148]

The situation is more complex when the agent acts within the scope of employment while conducting racketeering activity. In this situation, it may be more difficult to discern that the employee has an "independent" personal stake. The problem can arise when determining

142. *See* ePlus Tech., Inc. v. Aboud, 313 F.3d 166, 179 (4th Cir. 2002) (stating that the intracorporate conspiracy doctrine normally bars conspiracy claims between agents and a corporation).

143. *See supra* Part II.B.3.b (listing and describing cases that have applied the "personal state exception").

144. *See* Ashland Oil, Inc. v. Arnett, 875 F.2d 1271, 1281 (7th Cir. 1989) (stating that one of the purposes of RICO is to "separat[e] racketeers from their profits").

145. *See ePlus Tech.*, 313 F.3d at 179 (stating that the exception "applies only where a co-conspirator possesses a personal stake independent of his relationship to the corporation").

146. *See id.* at 179–80 (stating that where an agent siphoned off profits of a corporation, the personal-stake exception clearly applies).

147. *Id.*

148. *Id.*

whether an agent has "profited" from their conspiratorial actions. An agent can own part of a company, either through shares or as a partner, and therefore indirectly profit from conspiratorial acts conducted within the scope of his or her employment. Also, an agent may make a company more prosperous due to the conspiratorial actions and prosper indirectly through bonuses, raises, or promotions. While the Fourth Circuit has held that the "personal stake" of an agent must be clear and not merely "indirect economic interests," it may be difficult to discern whether the benefits are direct or indirect.[149] The facts of each individual case will determine whether the personal-stake exception can be used when an agent acts within the scope of employment and profits from the conspiratorial actions. The successful use of the exception requires clear evidence that profit acquired from the conspiracy was separate from the agent's relationship to the corporation.[150] Whether a profiting agent is acting within or outside the scope of employment, the personal-stake exception helps to enforce one of the main purposes of the RICO Act, which is to "separat[e] racketeers from their profits."[151] The exception allows for a RICO plaintiff to both bring a valid conspiracy claim to recover damages and target the persons who are profiting from the racketeering activity, the agents. While the personal-stake exception is helpful in situations where the agent has profited from the conspiracy, the basic tenets of agency law allow RICO plaintiffs to recover damages in scenarios where the agent acts outside of the scope of employment.

b. Agency Law Principles Distinguish Outside Actors From Corporations

Under the principles of agency law, "the acts of a corporation's agents are considered to be those of a single legal actor."[152] The intracorporate conspiracy doctrine applies this principle: "a corporation cannot conspire with its employees, and its employees, when acting in the scope of their employment, cannot conspire among themselves."[153] This is because "where employees of a corporation associate together to commit a pattern of predicate acts in the course of their employment and

149. *See* Oksanen v. Page Mem'l Hosp., 945 F.2d 696, 705 (4th Cir. 1991) (stating the "indirect economic interests" of removing one of the doctors from the market was insufficient to assert the personal-stake exception).

150. *ePlus Tech.*, 313 F.3d at 179.

151. Ashland Oil, Inc. v. Arnett, 875 F.2d 1271, 1281 (7th Cir. 1989).

152. McAndrew v. Lockheed Martin Corp., 206 F.3d 1031, 1036 (11th Cir. 2000).

153. *Id.*

on behalf of the corporation, the employees in association with the corporation do not form an enterprise distinct from the corporation."[154] It should be inferred from this idea, though, that when an employee acts outside the scope of his or her authority, the action is not that of the corporation. If the activity is not conducted by the corporation, then it must be the action of a separate, distinct entity. If an agent acting outside the scope of his or her authority is distinct from the corporation, then a § 1962(d) claim may be brought, regardless of whether the agent profited from the conspiracy. This is different from the personal-stake exception, which would only apply in the scenario where the agent had an "independent stake" in the conspiracy.[155] The separation of the agent acting outside the scope of authority from the corporation would help to further the purpose of the RICO Act as well. A RICO plaintiff could recover damages from the agent, if the agent was the party who benefited from the conspiratorial actions, or from the corporation, if it was the entity that profited. Either way, the racketeers are effectively separated from their profits, and the plaintiff is compensated for the damages he or she sustained.[156] Where the employee or agent acts within the scope of employment, though, the parties are still considered the same entity, but the other subsections of § 1962 provide adequate protection for the purpose of the RICO Act.

c. Other Subsections of § 1962 Can Target Racketeering Activity

Recent case law has minimized the importance of intracorporate conspiracy doctrine situations where an agent or agents conduct racketeering activity within the scope of employment. As long as the agents are acting within the scope of their employment, the actions are seen as if the corporation had conducted them, and the agents "do not form an enterprise distinct from the corporation."[157] As far as agency law is concerned, when the employee goes to work and becomes the corporation's agent, the two entities merge into one entity.[158] Therefore, the intracorporate conspiracy doctrine would apply and a RICO plaintiff could not bring a conspiracy claim against the profiting corporation. The

154. Riverwoods Chappaqua Corp. v. Marine Midland Bank, N.A., 30 F.3d 339, 344 (2d Cir. 1994).

155. *See supra* Part II.A.2.a (discussing personal-stake exceptions).

156. This fulfills the intent of the RICO Act, which is to "separat[e] racketeers from their profits." *Ashland Oil*, 875 F.2d at 1281.

157. *Riverwoods*, 30 F.3d at 344.

158. *See id.* (noting that when the employee acts within the scope of employment he forms a single entity with a corporation).

personal-stake exception may address this situation when the agent benefits from the conspiracy, but the facts may not always support the application of the exception.[159] In the past, this presented a further problem.

Pleading requirements have been stringent and have barred many plaintiffs from bringing § 1962 claims. If a RICO plaintiff could not bring a conspiracy charge, then he or she would have to look to the other subsections of § 1962 to try and recover damages. But, the language of the statute made it difficult to target the entity that benefited from the racketeering activity and "separat[e] [the] racketeers from their profits," as RICO intended.[160] The provisions of § 1962(a), (b), and (c) require that there be both a "person" and an "enterprise" through which the "person" conducts the racketeering activity. Under § 1961(3), a "'person' includes any individual or entity capable of holding a legal or beneficial interest in property."[161] While a corporation could fit this definition of a "person," there is a major obstacle to a plaintiff's claim against the corporation. These two entities must be distinct from each other for a plaintiff to assert a violation of RICO.[162] There has to be "'some distinctness between the RICO defendant and the RICO enterprise.'"[163] A RICO claim under subsection (a), (b), or (c) could not be brought against the agent because while acting within the scope of employment, the agent is considered part of the corporation, and there is no distinctness between the two.[164] At the same time, a claim could not be brought against the corporation since the corporation is both the "person" and the "enterprise" used to commit the violations.[165] In this situation, a damaged plaintiff would have no ability to recover damages under RICO even though a violation had occurred. The Supreme Court realized the peril caused by the language in the RICO statute and made it easier to plead a RICO claim.

In *Cedric Kushner*, the Supreme Court held that when a person is the sole owner of a corporation, the person is distinct from the corporation

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159. *See supra* Part II.A.2.a (describing personal-stake exceptions).

160. *See Ashland Oil*, 875 F.2d at 1281 (stating that the purpose of RICO is to "separat[e] racketeers from their profits").

161. 18 U.S.C. § 1961(3) (2000).

162. *See* Cedric Kushner Promotions, Ltd. v. King, 533 U.S. 158, 161 (2001) (stating that a "person" and "enterprise" must be shown to exist for a § 1962(c) claim to be alleged).

163. *Id.* at 162 (quoting Brief for United States as Amicus Curiae Supporting Petitioner, *Cedric Kushner*, 533 U.S. 158 (2001) (No. 00-549)).

164. *See id.* at 161 (recognizing the distinctness principle of § 1962).

165. *See* Riverwoods Chappaqua Corp. v. Marine Midland Bank, N.A., 30 F.3d 339, 344 (2d Cir. 1994) ("[A] corporate entity may not be both the RICO person and the RICO enterprise.").

for the purposes of § 1962(c).[166] While the Supreme Court determined it did not matter whether the agent's "affairs [are] within the scope, or beyond the scope, of corporate authority,"[167] the facts of the *Cedric Kushner* case are "that [the sole shareholder] was an employee acting *within* the scope of his authority."[168] If the sole shareholder and the corporation were the same entity, then no valid RICO plaintiff could assert a RICO claim to recover damages from the racketeering activity.[169] The sole shareholder could effectively shield himself from RICO liability.[170] Therefore, the Supreme Court determined that the sole shareholder and the corporation were distinct entities for the sake of the language of the RICO Act.[171] This distinction should be narrowly construed to the subsections of § 1962(a), (b), and (c), though, where the distinction between a "person" and "enterprise" is necessary to effectively plead a claim. If there were no distinction, then a RICO plaintiff would be effectively barred from bringing any type of RICO claim in this scenario. The Court's distinction in *Cedric Kushner* now provides adequate recourse for RICO plaintiffs because they can bring claims asserting the agent as the "person" and the corporation as the "enterprise" through which the "person" conducted racketeering activity, thus satisfying the stringent language of § 1962(a), (b), and (c). While this provides plaintiffs adequate recourse when the agents, acting within the scope of authority, profit from the conspiracy, a problem arises when the agents act within the scope of employment but do not profit from the racketeering activity.

In the situation where the corporation benefits from the racketeering activity but the agent does not, the RICO plaintiff still cannot bring a claim against the corporation. While *Cedric Kushner* distinguished the agents from the corporation to circumvent the language of § 1962(a), (b), and (c), it did not declare that a corporation was separate from itself.[172] A RICO plaintiff cannot assert that the corporation is both the "person" and the "enterprise." The plaintiff could target and recover damages from the agents who conducted the racketeering activity, but the corporation is the entity that truly profited. There has been some attempt

166. *Cedric Kushner*, 533 U.S. at 166.

167. *Id.*

168. Cedric Kushner Promotions, Ltd. v. King, 219 F.3d 115, 117 (2d Cir. 2000) (emphasis added), rev'd, 533 U.S. 158.

169. *See Cedric Kushner*, 533 U.S. at 161 (recognizing the distinctness principle of § 1962).

170. *See id.* at 165 (noting that important targets of RICO would be immunized from liability).

171. *Id.* at 165–66.

172. *See id.* at 166 (holding only that the separateness principle occurs where the agent is the sole shareholder of the corporation).

to apply respondeat superior liability, which would make "[a]n employer [] vicariously liable . . . for employee action taken within the scope of employment . . . with intent to benefit the employer."[173] If this principle could be applied, then a RICO plaintiff could target the corporation vicariously and successfully recover damages from the true profiteer. In general, the "rules of agency law apply absent Congressional intent to the contrary."[174] In RICO, however, there is a "Congressional intent to create an exception to the general rule of respondeat superior."[175] Nonetheless, the Sixth Circuit has held a corporation to be vicariously liable in a RICO claim.[176] But the corporation could only be vicariously liable if it was the RICO defendant and not the "enterprise" through which the racketeering activity was conducted.[177] In *Davis*, the insurance corporation was held to be distinct from the insurance agency.[178] Therefore, the corporation was brought as a RICO defendant, and the insurance agency was the "enterprise" through which the racketeering activity was conducted.[179] In most instances, though, this specific factual situation will not occur, and the injured plaintiff will only be able to recover from the corporation's agents, even though they did not directly profit from the racketeering activity.

A RICO plaintiff may be able to recover from the profiting corporation if the corporation's subsidiaries are involved. The intracorporate conspiracy doctrine applies similarly to a corporation and its subsidiaries as it does to a corporation and its agents.[180] A corporation and its subsidiaries do not have different rights and responsibilities like a corporation and its employees.[181] The two share a "single consciousness," and should therefore be treated as a single entity.[182] At the same time, it is possible for the corporation and its subsidiaries to be distinct for the purposes of § 1962:[183]

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173. D & S Auto Parts, Inc. v. Schwartz, 838 F.2d 964, 967 (7th Cir. 1988).

174. *Id.* at 968.

175. *Id.* (emphasis omitted).

176. Davis v. Mutual Life Ins. Co. of N.Y., 6 F.3d 367, 379–80 (6th Cir. 1993).

177. *See id.* at 379 (stating that "plaintiffs may not use RICO to impose liability vicariously on corporate 'enterprises,' because to do so would violate the distinctness requirement").

178. *Id.* at 377.

179. *Id.* at 379–80.

180. Chen v. Mayflower Transit, Inc., 159 F. Supp. 2d 1103, 1109 (N.D. Ill. 2001).

181. *Cf.* Cedric Kushner Promotions, Ltd. v. King, 533 U.S. 158, 163 (2001) (noting that a person and a corporation have "different rights and responsibilities due to [their] different legal status[es]").

182. Fogie v. THORN Ams., Inc., 190 F.3d 889, 899 (8th Cir. 1999).

183. *See* Lorenz v. CSX Corp., 1 F.3d 1406, 1412 (3d Cir. 1993) (noting that the corporation can be the defendant and the subsidiary can be the "enterprise").

> [While] theoretically possible for a parent corporation to be the defendant and its subsidiary to be the enterprise under section 1962(c) . . . , the plaintiff must plead facts which, if assumed to be true, would clearly show that the parent corporation played a role in the racketeering activity which is distinct from the activities of its subsidiary.[184]

The facts of each case will determine whether a parent corporation may be distinguished from its subsidiaries. If the factfinder determines that the two entities are distinct, then a RICO plaintiff could bring a claim against the corporation defendant, asserting the corporation as the "person" and the subsidiary as the "enterprise" through which the racketeering activity was conducted. This would allow the RICO plaintiff to recover from the entity with the biggest pockets, and it would further the intent of RICO by targeting the party that truly profited from the racketeering activity: the corporation.

In general, the purpose of RICO is adequately protected even without the dissolution of the intracorporate conspiracy doctrine. The personal-stake exception, agency law, and the other subsections of § 1962 allow for civil RICO plaintiffs to bring claims to recover damages incurred from the racketeering activity of actors and corporations. At the same time, these principles further the purpose of RICO by "separating racketeers from their profits."[185] Even though these other principles of law protect the purpose of RICO, the intracorporate conspiracy doctrine should still be barred in civil RICO conspiracy cases.

IV. RICO SHOULD BE AMENDED TO EXPLICITLY PROHIBIT INTRACORPORATE CONSPIRACIES

A. Public Policy Calls for a Removal of the Intracorporate Conspiracy Doctrine in RICO Cases

While the provisions of § 1962 provide adequate protection for civil plaintiffs victimized by racketeering activity, even with the intracorporate conspiracy doctrine, the doctrine should not apply in civil RICO conspiracy cases. Either explicit language should be added to § 1962(d) or the doctrine should be judicially dissolved by the Supreme Court. The intracorporate conspiracy doctrine should not be allowed to bar § 1962(d) claims, partly to ensure the purpose of RICO is not

184. *Id.*

185. Ashland Oil, Inc. v. Arnett, 875 F.2d 1271, 1281 (7th Cir. 1989).

threatened by the unique situation where an employee, acting within the scope of employment, benefits the corporation and not himself.[186] Also, the doctrine should be disallowed partly to ensure that RICO plaintiffs have an extra claim in the event they are unable to factually prove a claim under § 1962(a), (b), or (c). But the primary reason the use of the intracorporate conspiracy doctrine in RICO conspiracies should be barred is to provide a deterrent for both agents and corporations alike. The recent need for drastic corporate reform measures requires increasing deterrents to illegal behavior in the corporate setting, and the dissolution of the intracorporate conspiracy doctrine in RICO conspiracy cases provides an extra incentive for corporate agents to refrain from illegal business practices.

1. A Loophole in RICO Protection Exists

While the personal-stake exception, agency law, and the other subsections of § 1962 adequately protect the intent of the RICO Act and provide compensation to injured plaintiffs, there may be a unique situation where the purpose is not fully defended. In most situations, the personal-stake exception or agency law will allow a § 1962(d) claim to be brought against a corporation.[187] In other situations, the other subsections of § 1962 will protect the intent of RICO where a conspiracy cannot be established.[188] But in the situation where an employee acts within the scope of employment to benefit the corporation, a RICO plaintiff will be able to recover from the agents but not the corporation itself.[189] The possibility that a corporation, which benefits from the racketeering activity of its agents, will go unpunished creates a two-fold problem. First, the RICO plaintiff may not be able to recover sufficiently since it is limited to recovering from the agents rather than the often more resourceful corporation. Second, the intent of the RICO Act may be threatened since the profiteer is not separated from his profits.[190] The situation where an agent conducts racketeering activity, without directly profiting, to the benefit of his employer may be rare, but regardless, it produces a loophole in the established law. If the use of the intracorporate conspiracy doctrine was barred, either legislatively or

186. *See supra* Part III.A.2.c.

187. *See supra* Part III.A.2.a–b.

188. *See supra* Part III.A.2.c.

189. *See supra* Part III.A.2.c.

190. *See Ashland Oil*, 875 F.2d at 1281 (noting that one of the purposes of RICO is to "separat[e] racketeers from their profits").

judicially, then a RICO plaintiff could bring a § 1962(d) claim against both the agent and the corporation. This would solve both aspects of the problem within the scenario. A RICO plaintiff could target the deeper pockets of the corporation to ensure that he or she received adequate compensation for damages caused by the racketeering activity. Also, the dissolution of the doctrine fulfills the purpose of the RICO Act by separating the profiting racketeer, the corporation, from its profits.

2. Section 1962(d) Provides an Additional Claim for RICO Plaintiffs

The dissolution of the intracorporate conspiracy doctrine would provide plaintiffs an extra claim to recover damages. The ruling in *Cedric Kushner* has likely diminished the importance of § 1962(d) claims since it is now easier to bring a claim under the other subsections of § 1962.[191] But even in situations where a plaintiff can effectively plead a claim against the true profiting racketeer, the facts of the case may not allow the plaintiff to sufficiently prove to a factfinder that a RICO violation occurred. While § 1962(d) makes it "unlawful for any person to conspire to violate any of the provisions of subsection (a), (b), or (c) of [§ 1962],"[192] a RICO plaintiff is not required to prove that a RICO violation of one of these subsections occurred.[193] A conspiracy fails only "if the pleadings do not state a substantive RICO claim upon which relief may be granted."[194] Barring the use of the intracorporate conspiracy doctrine allows a RICO plaintiff to bring at least two claims to increase the chances that he or she will adequately recover damages for injuries suffered as a result of racketeering activity.

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191. Removing the hassle of separating an actor from the corporation makes it harder for claims to fail at the pleading stage. *See* Cedric Kushner Promotions, Ltd. v. King, 533 U.S. 158, 165 (2001) (noting that treating the actor and corporation as a single entity would immunize individuals from liability and thus bar valid claims).

192. 18 U.S.C. § 1962(d) (2000).

193. *See* Efron v. Embassay Suites (P.R.), Inc., 223 F.3d 12, 21 (1st Cir. 2000) ("A conspiracy claim under section 1962(d) may survive a factfinder's conclusion that there is insufficient evidence to prove a RICO violation.").

194. *Id.*

3. RICO Conspiracies Would Provide a Deterrent to Illegal Business Practices

a. There Has Been a Recent Shift Toward Increased Corporate Reform

While providing a RICO plaintiff with an additional claim and protecting the purpose of RICO are important, the most pressing need for the dissolution of the intracorporate conspiracy doctrine is to provide a deterrent to illegal corporate practices. A trend of increased corporate reform has emerged since the scandals of companies like Enron and WorldCom.[195] The collapse of these two giants left "a devastating impact on the companies involved, their creditors, shareholders, and employees."[196] While several other companies have experienced similar scandals,[197] no other scandals were as public or left as great an impact on the economy as WorldCom and Enron.[198] Within six months, the two corporations filed the two largest bankruptcy filings ever, resulting in numerous creditors who did not receive full repayment of their loans.[199] The collapses had an even more devastating impact on shareholders and employees.[200] At Enron, at least 6000 employees were laid off and shareholders experienced a loss of $179.3 billion.[201] At WorldCom, 17,000 employees lost their jobs and shareholders suffered over $66 billion in losses.[202] Employees at both companies also experienced the loss of their retirement savings as a result of the collapses.[203] In addition, the scandals had a national impact, resulting in substantial drops in the stock markets and the consumer confidence index.[204] While some critics attempted to place the blame for the scandals either on the accounting executives or corporate executives,[205] the underlying problems that led to these occurrences were "festering for years, and may be inextricably tied

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195. Carl W. Mills, *Breach of Fiduciary Duty as Securities Fraud:* SEC v. Chancellor Corp., 10 FORDHAM J. CORP. & FIN. L. 439, 439 (2005).

196. Lisa M. Fairfax, *Form Over Substance?: Officer Certification and the Promise of Enhanced Personal Accountability Under the Sarbanes-Oxley Act*, 55 RUTGERS L. REV. 1, 8–9 (2002).

197. *See id.* at 6–8 (noting scandals or earning restatements at Xerox, Rite Aid, Adelphia, and AOL).

198. *Id.* at 9.

199. *Id.*

200. *Id.*

201. *Id.*

202. *Id.*

203. *Id.*

204. *Id.* at 9–10.

205. *Id.* at 11.

to the corporate form itself."[206] The situations that occurred at Enron and WorldCom demonstrated the need for greater federal government power in corporate governance.

This need was based on the inability of "market forces and state regulatory regimes to adequately protect shareholders and the public."[207] In order to shore up this weakness in the market, the federal government, especially the Securities and Exchange Commission (SEC), has increased its role in regards to corporate governance.[208] One of Congress's biggest actions has been to enact the Sarbanes-Oxley Act.[209] The main goals of the Act are to "[m]ake management more accountable, [i]ncrease required disclosures, [s]trengthen the authority and obligations of corporate gatekeepers and outsiders, [r]emove conflicts of interest of management, auditors, gatekeepers and advisors, [r]egulate auditors more strongly, [s]trengthen the SEC, [and] [i]mprove guidance about accounting standards."[210] The provisions of Sarbanes-Oxley cover a wide array of corporate issues, including the creation of an accounting oversight board, the certification of financial records by CEOs and CFOs, the creation of auditor independence, and the requirement of fully independent audit committees, to name a few.[211] The Sarbanes-Oxley Act has had a number of benefits since its enactment. By focusing on the accounting methods and internal controls of companies, the Act "has unearthed lingering problems in the way companies operate."[212] In addition, it has fixed accounting problems created by lax financial controls.[213] Sarbanes-Oxley has given companies "an opportunity to evaluate their business and make positive changes that can benefit shareholders."[214] As companies look internally to comply with the new regulations, the increase in information leads to more efficient business practices.[215] Arguably the best result is that increased disclosure spurred

206. Mills, *supra* note 195, at 439.

207. *Id.*

208. *Id.*

209. Don A. Moore, *SarbOx Doesn't Go Far Enough*, BUS. WK., Apr. 17, 2006, at 112.

210. Beverley Earle & Gerald A. Madek, *The New World of Risk for Corporate Attorneys and Their Boards Post-Sarbanes-Oxley: An Assessment of Impact and a Prescription for Action*, 2 BERKELEY BUS. L.J. 185, 190 (2005).

211. Marianne M. Jennings, *A Primer on Enron: Lessons From a Perfect Storm of Financial Reporting, Corporate Governance and Ethical Culture Failures*, 39 CAL. W. L. REV. 163, 243–44 (2003).

212. David Henry et al., *Death, Taxes, & Sarbanes-Oxley?*, BUS. WK., Jan. 17, 2005, at 28.

213. *Id.*

214. Cory L. Braddock, *Penny Wise, Pound Foolish: Why Investors Would Be Foolish to Pay a Penny or a Pound for the Protections Provided by Sarbanes-Oxley*, 2006 BYU L. REV. 175, 183 (2006).

215. *Id.* at 183–84.

by Sarbanes-Oxley has increased investor confidence in the accuracy of companies' reportings.[216] By requiring independent audit committees, the Act "provide[s] investors with a transparent picture of what is happening within a company."[217] Sarbanes-Oxley has helped to strengthen these independent auditors and remind them "that they work for, and report to, the audit committee and not senior management."[218] In the least, Sarbanes-Oxley has impacted a wide array of business fields and has proved effective at restoring some investor confidence in the market.

b. Critics Argue that Further Corporate Reform is Not Needed

While the need for a response to the Enron and WorldCom scandals was obvious at the time, recently there have been criticisms of the Sarbanes-Oxley Act and corporate reform in general. The main criticism of Sarbanes-Oxley is that the benefits are outweighed by the costs.[219] It cannot be denied that the costs of complying with Sarbanes-Oxley are high.[220] The costs mostly stem from increased external auditor fees and the implementation of internal control systems.[221] The Act has proved to be at least ten times more expensive than the SEC expected.[222] The average cost of implementing measures to comply with the Act is around $35 million for companies with $4 billion or more in revenue.[223] Arguably the most expensive provision of Sarbanes-Oxley is Section 404, which "requires that corporate executives and their auditors document, and certify to investors, that their internal financial controls work properly."[224] This requires a large amount of money, manpower, and paperwork, which could be better spent focusing on business objectives.[225] The costs of complying with Sarbanes-Oxley have also resulted in the de-listing of companies and the refusal of private

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216. Henry et al., *supra* note 212, at 28.

217. Braddock, *supra* note 214, at 181–82.

218. *Id.* at 182.

219. Robert B. Ahdieh, *From "Federalization" to "Mixed Governance" in Corporate Law: A Defense of Sarbanes-Oxley*, 53 BUFF. L. REV. 721, 727 (2005).

220. Henry et al., *supra* note 212, at 28.

221. Tosha Huffman, Note, *Section 404 of the Sarbanes-Oxley Act: Where the Knee Jerk Bruises Shareholders and Lifts the External Auditor*, 43 BRANDEIS L.J. 239, 254–55 (2004).

222. Alistair Barr, *SEC: Scale Back Sarbanes-Oxley*, MARKETWATCH, Dec. 9, 2005, http://www.marketwatch.com/search (type "SEC: Scale Back Sarbanes-Oxley").

223. Henry et al., *supra* note 212, at 30.

224. *Id.*

225. *Id.*

companies to go public.[226] This poses a double problem for investors in that they are passed on the costs of compliance, and they have fewer investment options.[227] In addition, if investors are forced to invest in private equity firms, then their risk increases since these companies do not abide by the stringent requirements of publicly traded companies.[228] As a result of these large costs of compliance, critics argue that the "'pendulum' ha[s] swung too far [in favor of regulation] in response to the Enron and WorldCom corporate scandals."[229] The critics feel that increased regulation and corporate reform is unnecessary since the costs of existing legislation far outweigh the benefits of deterring future questionable business practices.

c. There Should Be an Expansion of RICO to Aid in Corporate Reform

While there are problems with Sarbanes-Oxley and other corporate reform measures, there is still a need for further corporate reform to ensure that corporate agents are effectively deterred from conducting illegal practices. There is fraudulent activity ongoing in corporate America, and more stringent legislation is necessary to prevent these questionable business practices from continuing. This is evidenced in the large number of financial restatements that have occurred. Since the enactment of Sarbanes-Oxley "[s]ixty-seven percent of U.S. companies have had to restate their financial results."[230] The number of restated reportings almost doubled from 2002 to 2005.[231] The fact that two-thirds of American companies have declared that their reported earnings are incorrect suggests that further corporate reform is necessary to make public companies truly transparent. While the costs of transparency are considerable, the result is a more accurate valuation of companies.[232] True valuations of corporations benefit employees, investors, creditors, and the economy as a whole.[233] In addition, legislation like Sarbanes-

226. Thomas Kostigen, *Stuff a S-OX in It*, MARKETWATCH, Aug. 4, 2006, http://www.marketwatch.com/search (type "Stuff a S-OX in it"; then choose "At 4, Sarbanes-Oxley Worth Celebrating, Not Maligning") (quoting Neal Wolkoff, chairman and chief executive of the American Stock Exchange).

227. Braddock, *supra* note 214, at 176.

228. *Id.*

229. Kostigen, *supra* note 226.

230. *Id.*

231. *Id.*

232. *See id.* (noting that the enactment of corporate reform measures has resulted in a more accurate reflection of company valuations).

233. *Cf.* Fairfax, *supra* note 196, at 8–9 (noting that the collapses of Enron and WorldCom, caused by over valuations, had "a devastating impact on the companies involved, their creditors,

Oxley was "hastily enacted," and therefore, still has gaps that need to be filled in order to deter questionable business practices.[234] Sarbanes-Oxley has been considered "emergency legislation" enacted in response to the "frenetic media coverage of [corporate scandals]."[235] Because of the haste with which it was enacted, Sarbanes-Oxley "poses significantly greater risks of both honest mistakes and special interest abuse."[236] It has also been argued that a lack of foresight has led to too much concentration of corporate governance power in one agency, the SEC.[237] The criticism is that the SEC "has long been prone to regulatory overreaching" and has had a "longstanding agenda to insert itself into corporate governance."[238] With continuing questionable business practices that cannot be curbed solely with existing legislation, there is a need for increased corporate reform.

In order to continue the trend and further deter illegal business activity, the intracorporate conspiracy doctrine should be dissolved in civil RICO conspiracy claims. While originally one of the purposes of the RICO Act was to confront white-collar crime, this application has for the most part been disregarded.[239] The provisions of RICO "could be a powerful weapon against corporate crime, if it enjoyed the scope and force Congress originally intended."[240] Barring the use of the intracorporate conspiracy doctrine is one possible way to strengthen the provisions of RICO to confront the increase in white-collar crime. This modification will increase accountability in corporate governance and further deter high-ranking corporate officials from committing fraudulent acts. Plaintiffs are allowed to recover treble damages to specifically deter violations of the RICO Act.[241] In addition to the consequences of a Sarbanes-Oxley violation, the possibility of having to pay treble damages provides an extra incentive for a corporation's agents to act within the boundaries of the law.[242] At the same time, the dissolution of the doctrine will fill at least one of the gaps in current legislation, while diverting some of the power of corporate governance away from the SEC

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shareholders, and employees").

234. *See* Earle & Madek, *supra* note 210, at 189 (examining the legislation, specifically as it relates to attorneys, and noting the flaws).

235. Ahdieh, *supra* note 219, at 728.

236. *Id.*

237. *Id.* at 728–29.

238. *Id.*

239. Goldsmith, *supra* note 2, at 283.

240. *Id.*

241. Ruscio, *supra* note 134, at 130.

242. *See id.* ("The purpose of punitive damages in the RICO and PMPA statutes is to deter violations.").

and back to the courts. While the provisions of Sarbanes-Oxley have helped increase deterrence of illegal business practices, the strengthening of the RICO Act, by excluding the intracorporate conspiracy doctrine, can only help to further corporate reform.

d. Implications of the Dissolution of the Intracorporate Conspiracy Doctrine

Barring the use of the intracorporate conspiracy doctrine in civil RICO conspiracy claims will have several implications, both positive and negative. The dissolution of the doctrine will lead to increased costs for American corporations. These corporations already spend large amounts of money to comply with the provisions of Sarbanes-Oxley.[243] Now, these same corporations will have to spend more money, both in the form of attorney's fees and court costs (because of the increase in overall RICO claims) and in the form of damages (because of the increase in successful RICO claims). These costs could possibly be passed on to investors and the American public as a whole. In addition, the less stringent requirements for bringing § 1962(d) claims will result in an influx of new RICO conspiracy claims. It could be argued that the ruling in *Cedric Kushner* has already led to a rise in the number of RICO lawsuits due to its distinction of "person" and "enterprise." However, there is a strong likelihood that the dissolution of the intracorporate conspiracy doctrine will lead to another increase in RICO claims. The increase in claims will likely lead to more congested federal courts and an increase in frivolous lawsuits, thus increasing the burden on the public as a whole.

While the costs of dissolving the intracorporate conspiracy doctrine will be high, the benefits outweigh these consequences. Though the increase in RICO claims may increase frivolous lawsuits, the influx of claims will also result in more successful injured parties receiving adequate compensation for the damages they suffer as a result of corporations' racketeering activity. The increased costs do not remove the need to provide injured parties a way for recovering from illegally profiting corporations. Additionally, the dissolution of the intracorporate conspiracy doctrine will lead to greater awareness among corporate officers of the implications of questionable business activity. Liability will have severe consequences for agents, since plaintiffs may recover

243. *See supra* Part III.A.3.b.

treble damages.[244] This possibility will lead agents to think twice before conducting questionable business activities. Agents need to be informed of the consequences of their actions now that they may be liable for conspiracies under § 1962(d). It is hoped that since the enactment of Sarbanes-Oxley companies have educated employees on the ramifications of the recent legislation. Corporations should continue this education on corporate reform with either in-house instruction or required outside seminars. Greater education and awareness will lead to more knowledgeable agents, which would in turn lead to fewer illegal acts and conspiracies. This will result in lower costs for corporations and individual investors. While there are negative effects of barring the intracorporate conspiracy doctrine, the benefits of deterring illegal business activity and compensating injured parties are far greater. In order to further corporate reform and realize these benefits, the intracorporate conspiracy doctrine should no longer apply in situations involving civil RICO conspiracies.

V. CONCLUSION

The intracorporate conspiracy doctrine is an outdated legal principle in the realm of RICO conspiracies. There is nothing incorrect about the original application of the doctrine in antitrust litigation or its subsequent extension to federal discrimination claims. The doctrine, though, should cease to apply in conspiracy claims arising under § 1962(d). The Seventh, Ninth, and Eleventh Circuits assert this same proposition. But the reasons stated by these appellate courts are unpersuasive. The intracorporate conspiracy doctrine should not fail in civil RICO conspiracy cases merely because the underlying conduct is "criminal in nature." Additionally, the doctrine should not be barred because it threatens the purpose of RICO. As was stated earlier, the personal-stake exception, agency law, and the other subsections of § 1962 provide adequate protection both for injured plaintiffs and for the intent of RICO. Instead, the dissolution of the intracorporate conspiracy doctrine in RICO claims is the logical next step in furtherance of corporate reform. Since the collapse of WorldCom and Enron, the federal government has enacted increasingly stringent legislation to deter questionable business practices. These actions have proved expensive and time-consuming for corporations to comply with, and there is an argument that the corporate

244. *See* 18 U.S.C. § 1964(c) (2000) (stating that a civil plaintiff can bring a claim under § 1962 and receive punitive damages).

reform measures already enacted are sufficient or maybe even too strict. However, the incentive to cheat the system still exists in corporate America, and the corporate reform trend should continue in order to deter corporate officers from conducting illegal business practices. A RICO conspiracy claim arising under § 1962(d) provides an extra deterrence to this type of behavior. It provides civil plaintiffs recourse to recover both damages for injuries sustained from racketeering activity and punitive damages to deter the conspiring parties. It is for this reason that the intracorporate conspiracy doctrine should be barred, either legislatively or judicially. The dissolution of the doctrine produces another deterrent to illegal business activity, thus taking the next step to further the expanding trend of corporate reform.